

**Ravalli County Planning Board
Meeting Minutes for August 2, 2006
7:00 p.m.
First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road
Hamilton, MT 59840**

Continuation of Public Hearing
Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight Variance
Requests

1. Call to order

Dan called the meeting to order at 7:03 p.m.

2. Roll Call (See Attachment A, Roll Call Sheet)

(A) Members

Mary Lee Bailey (present)
Dale Brown (present)
Ben Hillicoss (present)
Dan Huls (present)
JR Iman (present)
Chip Pigman (absent – excused)
Les Rutledge (present)
Lori Schallenberger (present)
Gary Zebrowski (present)

Park Board Representative: Bob Cron (absent – excused)

(B) Staff

Benjamin Howell
Karen Hughes
James McCubbin
Renee Van Hoven
Jennifer De Groot

3. Approval of Minutes

Dan asked if there were any corrections or additions to the minutes from July 5, 2006. There were none. The minutes were approved.

4. Amendments to the Agenda

There were none.

5. Correspondence

Renee noted that the applicant submitted a map of proposed trails. She read from the revised Staff Report dated August 2, 2006. She said that Staff recommends the construction of trails as proposed prior to the final plat approval of the first phase. She also noted that the DNRC

submitted comments on the drainage and recommended that the Manning's equation include an extra two feet of depth. She said that Staff recommends a flood hazard determination and WGM has done that determination and submitted it to PCI for review. She asked that the Board make no decision on the subdivision until the review is complete. (See Attachment B, Update to the Staff Report and August 2, 2006 Amendment to the Aspen Springs Staff Report)

Ryan Salisbury with WGM Group, Inc., asked if Staff received an email from PCI near 5:00 p.m.

Renee said she did, but Staff has not yet had time to review it.

Ryan said that PCI looked at their flood hazard determination proposal and is in agreement that there are no huge issues.

Renee noted that Staff has not received a flood hazard determination from WGM for review.

6. **Disclosure of Possible/Perceived Conflicts**

Dan did not ask for conflicts.

7. **Public Hearing – Continued from July 17, 2006**

(A) **Aspen Springs (Wesmont) Major Subdivision and Eight Variance Requests**

(i) Board Deliberation on Variance Request # 1 (Phasing)

(a) Board discussion and questions

Dan explained that the Board will now enter deliberations and may ask specific questions to the developer, his agents, or other members of the public.

Gary asked the Board and developers how they thought phasing impacts what donations and fees are paid now and what they will be worth near the end of the phasing.

Nick Kaufman said that the developer has proposed \$300 per lot to the School District, \$100 per lot to the Sheriff, to be paid at the time of obtaining an electrical permit, \$88,000 for the slip lane, improvements to Lower Woodchuck Road and Eight Mile Creek Road with Phase 1, and the platting of a land donation to the Fire District with Phase 1.

Gary said that 15 years from now, no matter what fees are agreed on today, the cost of living and valuation of the dollar will change. He asked if the developer has thought about paying additional monies through the phases to account for inflation.

Ryan noted that although the developer proposed a voluntary school mitigation fee, if impact fees are enacted, the homeowners in Aspen Springs would pay that fee; however, the lots should not have to pay for both donations and impact fees. He said that the new lots would also be subject to bond issues.

Nick noted that as the homes increase in value over time, taxation will increase. He said that the developer would not object to tying fees to the consumer price index.

Les asked what mitigation the Planning Department could institute in the event that the subdivision created adverse cumulative effects.

James explained that the entire subdivision was under consideration at this time. He noted that the DEQ approval process would address cumulative impacts of the water and sewer system, but the rest of the subdivision was on the table.

Ben asked if the liability to pay contributions to entities such as the School District and Sheriff's Department goes to the new owner or stays with the developer.

Nick said that the obligation would stay with the developer, although the amount of payment is shifted contractually to the lot purchaser.

Ben asked if changes in the Subdivision Regulations, state law, or local impact fees affect the future phases of the subdivision or if the amounts are locked in, with exception to the price index that was previously discussed.

James noted that approval of the subdivision would be under current applicable law and regulations. He said that they can account for future values that are calculable per the preliminary plat decision. He noted that impact fees would apply to this subdivision because under Montana Law, the fees are related to construction. He said that a few weeks ago, 76-3-510, MCA was raised in connection with impact fees and subdivision donations. He said that George Corn wrote a letter to Mr. McGee of the Florence Carlton School District, regarding the School Boards Association's position on the statute. He said that the School Boards Association will be making an argument that the County is not limited by the law's language due to changes in law regarding the impact fee bill. He explained that because of the law, Staff has amended Condition 17, which states that school donations cannot be used for the extension of capital facilities related to education. (See Attachment C, July 27, 2006 Letter from George Corn to John McGee)

Ben said he received a Staff memorandum dated August 2 which addresses a number of issues. Since no one in the audience has a copy of the memorandum, he asked the Planning Department to give a verbal summary of its contents.

Renee explained the Amendment to the Staff Report dated August 2, 2006. She noted that Staff removed Condition 28 about proposed parks.

James explained that the development proposal as submitted satisfies park dedication requirements without further conditions.

Renee continued to talk about the Amendment to the Staff Report dated August 2, 2006. She discussed the southern connection requirement, road improvements, floodplain issues, and effects on public health and safety.

JR said that one reason that the state phasing laws limit phases to a five-year basis, is that in a rural setting, there is not a lot of intent toward projecting more than five years at a time. He said that in the absence of phasing requirements exceeding five years, the Board has to make an attempt to project what kinds of impacts may come

upon the owners as phasing is continued. He asked what rights people who already purchased lots in the subdivision have. He said that answers to that question up to this point have been inadequate. He said that this subdivision is close in size to the town of Stevensville, which has its own infrastructure. He noted the difference with this subdivision is that it is controlled by one person or entity. He asked James what types of bonding the Board could require from the developer to make sure that the entity lasts until the completion of the project. He asked what would happen if a catastrophic event occurred, such as the organization sponsoring the subdivision becoming insolvent. He noted that in the northwest, there were proposals for a ski development where lots were sold predicated on a ski development being completed. He explained that the developers went bankrupt and now the homeowner's association owns the ski hill. He asked about the County's bonding process and impacts to the public if the phasing is granted.

James said that typically, conditions of approval have to be met before the filing of final plat. He noted that under state law, the subdivision applicant can present a final plat submittal and get approval without prior construction of infrastructure if they provide a bond or other security that the County Commissioners approve. He said a typical amount is 120%, although they require higher securities on roads due to increased costs. He noted that the Board could draft the issue as a lien. He explained that any title company that reviews the record will read the preliminary plat decision and see that a payment is needed at the time of sale. He said there were no state statutes on phasing. He noted that there is a deadline for filing final plat, but an alternate statute gives authority to extend the timeline with a written agreement. He said his opinion is: If the Board grants a phasing variance, it would qualify as a written agreement between the County and the developer.

JR asked that in this situation, where the applicant has requested 33 phases, what percentage of roads have to be complete for each phase.

James said that if the amounts are not clear in the application, the Board can impose conditions phase-by-phase if they choose.

Karen said there are at least four different proposed conditions which deal with the phasing issue to confirm that there is adequate infrastructure in place for each phase. She noted that Conditions 21, 24, 25, and 26 deal with phasing. Condition 21 requires temporary turn-arounds for emergency service providers. Condition 24 requires the County Commissioners to approve any changes to the phasing plan. Condition 26 requires that infrastructure necessary for each phase has to be finished before the next phase. Condition 25 requires easements for necessary infrastructure. She explained that DEQ review will happen as the subdivision progresses and the developer will have to meet the most recent DEQ requirements.

James noted that Staff has recommended separate conditions particular to the first phase. He explained that the Board can do the same and impose a condition particular to a specific phase.

JR asked at what point the owners get vested interest for what they have paid. He noted that every other entity that exists in this county has some infrastructure protection for the people already present. He said although the person with the master idea should have some control, it is not fair to the general public.

Karen asked JR if his question was at what point homeowners have control of the homeowner's association. She noted that the issue could be dealt with through a condition of approval.

James said the Board could add the condition provided it relates to the review criteria.

JR asked how the phasing will impact the current and future homeowners if there are problems with the sewer system, for example.

Karen said the Board may ask the developer to discuss specific parts of the homeowner's association relating to infrastructure.

John Tabaracci said that DEQ requires an operator for the system so the homeowner's association, which at the start is the developer, will have to retain an operator. He noted that people will have rights to the system because they have easements to them. He said that there will be sanitary easements reflected on different plats.

JR asked at what point a group of people has control over things in the subdivision, such as a drain field. He said the developer is saying that he is responsible for the subdivision until it is completed.

John said that all owners, when they purchase a lot, get an interest in the homeowner's association and they all have a vested property right to use it regardless of the developer.

Nick said that all the phases can stand alone or together regarding transportation, sewer, and water. He noted that the State of Montana controls the public sewer and water system and the cost of the operation and maintenance of sewer and water is borne by the landowners. He explained that during each phase, the drain fields are added to the larger system; as the facilities get larger, responsibilities get larger. He remarked that the homeowner's association deals with rules and regulations associated with owning pets, fences, and architectural control. He noted that regardless of a developer, when a group of 300 people meet the criteria, they can incorporate; then they can take over street maintenance and fire and police systems. He explained that this does not eliminate the option for future incorporation.

James read from the application that the homeowner's association would cease maintenance in the event there was a rural or city SID.

Nick explained that under SID waivers, the homeowners waive the right for anything allowed under state law. He noted that in extreme situations, the County could create a SID, so people could be assessed and run what part of the system they wanted with the SID, so there are three layers of safeguards.

Les noted that the application said the homeowner's association is not created until six months after the last unit has sold.

Perry Ashby said that they formed a homeowner's association very early in another one of his projects and the homeowners were involved in the development process.

He said that there are fees paid to the association for road, water, sewer, and lawn maintenance, and the fees are kept in a kitty for capital improvements projects. He said that although the other project only has 250 homes built out of an expected 380, the homeowner's association has complete control of the subdivision at this point.

John said that the application states that until the time that lots are sold by the declarant, he shall act as the association. Once lots are sold, the declarant with the owners will act as the association. He said that within six months of the last lot selling, everything is turned over to the homeowner's association.

Lori pointed out that Staff is recommending a payment of \$88,000 to MDT at the start of the first phase.

James noted that the Staff's conditions are not exactly the same as what the developer is proposing.

Ben said although he likes seeing the full plan, he is concerned about the variance. He noted that energy, the climate, the dollar, and gas prices are changing and there are constantly changes to the law. He noted concerns about global warming. He said he was concerned about approving the variance because whatever happens in the future, the Board is stuck with what they decide today. He said he would not mind approving five years worth of phases and then having the developer come back with whatever they will do in the next five years. He said he finds it problematic to project what will happen over 20 years and is opposed to approving the variance.

Dale asked Ryan if he checked on the filters and modules for the Orenco system. He asked how much parkland space will be used for drain fields.

Ryan said that about 10% of the parkland will be drain fields. He noted that the systems can be placed at grade. He recommended looking at the Wildflower Subdivision because the insulation of those Advantex systems is much more typical.

Dale said that the systems in the Twite subdivision have sides which open up, which would require them to be just above grade for maintenance. He estimated that there will be 72 systems in Aspen Springs, which will take up a lot of the parkland in different areas.

Ryan said that there is one park with no drain fields proposed.

The Board went through the Five Criteria. (See Review of the Variance Request Against the Five Criteria)

JR commented that the developer made a strenuous effort to create something that the public said they wanted through the Growth Policy, including roads, parks, and open space. He noted that the developer will provide that if he can have double density in a rural area 25 miles from jobs. He explained that the Board has to consider whether the tradeoff is worth it and noted that there is a fundamental difference between this subdivision and those submitted previously. He explained that the developer offered to put in public utilities and infrastructure. He referred to

the Gunshy Ridge subdivisions, which were hundreds of lots spread out over four applications. He said he was in favor of the variance on this basis.

Ben clarified that the discussion is on the first variance, which is to allow 33 phases over 20 years. He said that the developer could propose the exact same subdivision and complete it in two phases over four years and not need this variance. He noted that a lot of the mitigation payments are spread out over 20 years.

The Board continued going through the Five Criteria. (See Review of the Variance Request Against the Five Criteria)

Ben recommended a motion to deny the variance for the reasons stated in the record.

Mary Lee seconded the motion.

Nick said the Subdivision Regulations provide a time for the applicant to speak before each motion is voted upon.

James explained that the applicant had plenty of time to speak at previous meetings.

Dan noted that the Board has not historically granted developers or their agents time to speak.

James said that the regulations are not clearly written. He said that the Board may allow the applicant to speak if they have something to add, but previous comments have already been heard.

Dan asked if the applicant wished to amend their presentation.

Curtis Cook interjected that the meeting is a public hearing if the developer is allowed to speak again.

James said public comment would have to be reopened if there was new information. He said the Subdivision Regulations refer to a closing argument relating to the motion.

Dan said that based on historical precedents and James' statements, the Board will not accept testimony at this time.

JR asked James what would happen if this variance is denied.

Karen said that phasing requirements in the Subdivision Regulations assert that if this variance is not granted, the applicant would be under the general preliminary plat decision deadline or the applicant could amend their application to fall under Section 3-2-21 of the regulations, which allows two phases over four years.

JR asked if there is a provision for extension with reason.

James commented that if the variance is denied, but the subdivision is approved, unless the application is amended to provide phasing plans, the entire subdivision would need to be done in one phase.

JR asked if the alternative in denying 33 phases over 20 years is either a resubmittal of another phasing plan or two phases over four years.

James said that unless there was a change to the application or a different variance proposed, the developer would have only one phase due for completion within 18 months of the preliminary plat extension with the possibility for an extension per Commissioner approval.

Gary asked if the variance is denied, if the applicant could resubmit a phasing plan to be considered as a variance.

Karen said there are three options available to the developer: meet the standard 18-month approval time for major subdivisions with a one-year extension possible, meet the phasing plan in the regulations (two phases over four years), or submit a new variance request with a different phasing plan.

Gary asked how much time the applicant has to resubmit a new variance for phasing.

Karen said that if the variance is denied by the County Commissioners, it would affect their proposal and the subdivision would go to the standard 18-month preliminary plat approval time. She said the developer would have until he filed for final plat to request the variance.

Gary asked if the developer does want a new variance, if it extended the time for the Board to make a decision or if they are bound by the County Commissioner meeting and need to make immediate action.

Karen explained that the developer could ask for a variance after they receive preliminary plat approval, which might affect the proposal and require evaluation, or they could ask for an extension of the preliminary plat review time.

(a) Board action

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

One Board Member agreed; seven disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Eight Board Members disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Eight Board Members disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Six Board Members agreed; two disagreed.

5. The variance will not cause a substantial increase in public costs.

Eight Board Members disagreed.

(See Attachment D, Variance #1 Five Criteria Review)

(2) Board Decision

The vote was called; the members voted (8-0) to deny the variance. (See Attachment E, Variance #1 Vote Sheet)

(ii) Board Deliberation on Variance Request # 2 (Road connection to the south)

(a) Board discussion and questions

Les said that the Board cannot argue against the Subdivision Regulations, which require a road connection to an established platted area.

Gary asked if this was a second right-of-way connection.

Karen said the current proposal is for three accesses off Lower Woodchuck Road.

Ben said he has spent 10 years on the Florence Volunteer Fire Department and said results can be catastrophic if there is only one way out of a neighborhood. He said although he knows the neighbors to the south do not want added traffic, this issue could be a huge problem.

Gary clarified that the developer is proposing an emergency exit only, not a routine travel area.

Lori asked Staff their recommendation on the variance.

Renee noted that Staff's recommendation is for denial. She noted that Staff has not chosen a particular area for the road access, but the developer is proposing an emergency access off Mountain View Road.

Ben recommended a connection off Eight Mile Creek Road to Hidden Valley North, because without one, they could still end up with a bottleneck on Lower Woodchuck Road and Eight Mile Creek Road.

Nick said that any one of the roads to the south of the subdivision could be used for a proper neighborhood connection. He also noted that the access has to be established with Phase 1. He commented that Staff said those roads have inadequate right-of-way so they would not have physical access.

Ben said that it is not up to the Board to design the second access, but they have to judge whether the developer has chosen a safe way. He asked how the emergency gate would function if someone in the development had a heart attack.

Nick said they usually place a 1-foot by 4-foot gate at the emergency exit, which can be broken with a car or a foot.

Ben said that based on the size of the subdivision, the development will need a regular, open, and available road.

Ryan said that the developer has presented this information in previous presentations, but has not identified each of the variances. He explained that the Road Department will not approve a road with a 40-foot right-of-way and he does not know if the County and/or landowners will be willing to work with them. He noted that the Road Department did approve their project and that Lower Woodchuck Road was designed to handle large loads of traffic. He said that the Staff Report noted this connection is not a requirement of the Subdivision Regulations. He explained that this variance is a request to provide inter-neighborhood connection with a trail and emergency barricade.

James said that the developer has had plenty of time to address the application. He explained that this issue is not a recommendation from Staff, but is located in the Subdivision Regulations, which is why a variance was requested. He read the Subdivision Regulations which discuss inter-connectivity of roads. He said that the second clause addresses the road to the east. The first clause is a requirement that the roads be connected to adjacent platted areas. He noted that under the current regulations, they only have to connect to one of the roads to the south. He said his position is that an emergency access with a gate does not satisfy that requirement because gated access does not allow for any traffic.

Les motioned for denial of the variance.

Ben seconded the motion.

Ryan said he believed they could present their side of the variance request because these items were discussed two or three weeks ago.

Ben noted that the Board has repeatedly recommended that they have multiple accesses designed in all major subdivisions.

James noted that if the variance is not granted, the developer will have to connect to that road and that road will need to be upgraded to County standards.

Ryan asked if the road could be identified as something other than a primary access so it could be a lesser width.

James said he believes a 60-foot easement is required for all roads and the developer would have to apply for another variance if he wants a smaller road.

Ryan asked if the Board could condition it in.

James said that was not possible, although a variance application can be submitted after the subdivision is approved.

Gary asked the standard width necessary for fire trucks.

James said that was asking for new facts beyond this variance.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-1) to deny Variance #2. (See Attachment F, Variance #2 Vote Sheet)

(iii) Board Deliberation on Variance Request # 3 (No-build zone over high pressure gas line)

(a) Board discussion and questions

The Board took a five-minute recess.

Ben said he understands that the new Subdivision Regulations require a 50-foot easement and the old ones required a 100-foot easement.

Renee explained that the old regulations required 100-foot setbacks from the line and new the regulations require 25-foot setbacks.

JR motioned to approve the variance in accordance with the new regulations and according to the recommendation in the Staff report.

Lori seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #3. (See Attachment G, Variance #3 Vote Sheet)

(iv) Board Deliberation on Variance Request # 4 (Lot size)

(a) Board discussion and questions

Mary Lee said she was concerned about this type of development in the proposed area because there were only 161 acres available for 642 lots. She said that many of the lots are less than 7,500 square feet and seven are less than 4,000 square feet. She said she has concerns about granting this variance.

Les said he thinks this is a good attempt by the developer to initiate a modified cluster development with mixed use. He noted this is the way the County will be going and people should get accustomed to these designs. He explained that although this development is not technically a “cluster development,” it does accommodate more people in smaller spaces and it conserves infrastructure.

Gary asked if there were any fire standards for how close homes can be placed.

Perry explained that International Residential Code requires a minimum 3-foot side setback, but he has proposed a 5-foot setback.

Karen noted that Staff’s recommendation was a 5-foot setback.

Ben said he agrees with some of Les’ comments, but also thinks there are other solutions than these very small lots. He recommended sharing common walls, creating high-rises, or building multiple stories. He felt that these small lots, although he agrees with their density, are out of character with the surrounding area.

Dan said that it is a good design from a land standpoint. He noted that 5 and 10-acre tracts are eating up the valley and denser developments will have to be proposed if everyone wants to enjoy the area.

Ben asked to go through the Five Criteria and asked Staff their recommendation.

Karen said that Staff recommended conditional approval of the variance.

Nick said that the variance will not result in a substantial increase in public costs.

Ben said he respectfully disagreed.

Gary motioned approval of the variance in accordance with the conditions in the Staff Report.

Dale seconded the motion.

(b) Board action

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Six Board Members agreed; two disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Five Board Members agreed; three disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

One Board Member agreed; seven disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Seven Board Members agreed; one disagreed.

5. The variance will not cause a substantial increase in public costs.

Five Board Members agreed; three disagreed.

(See Attachment H, Variance #4 Five Criteria Review)

(2) Board Decision

The vote was called; the members voted (6-2) to approve Variance #4. (See Attachment I, Variance #4 Vote Sheet)

(v) Board Deliberation on Variance Request # 5 (Flag lots)

(a) Board discussion and questions

Gary asked Staff to briefly explain the variance.

Karen noted that flag lots are permitted by the Subdivision Regulations if they are not in avoidance of road construction. She explained that the variance only affects six lots and the length of road construction avoided is short. She noted that Staff recommended approval of the variance.

JR motioned to approve the six flag lots, as they are less than one percent of the total proposed lots.

Les seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #5. (See Attachment J, Variance #5 Vote Sheet)

(vi) Board Deliberation on Variance Request # 6 (On-site road standards)

(a) Board discussion and questions

Gary clarified that this variance was requested so that the internal roads would be approved under the new regulations instead of the old ones.

Ben motioned approval of the variance subject to the conditions in the Staff Report.

Lori seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to approve Variance #6. (See Attachment K, Variance #6 Vote Sheet)

(vii) Board Deliberation on Variance Request # 7 (Off-site road standards - Lower Woodchuck Road)

(a) Board discussion and questions

Gary asked the pro-rata amount the developer would have to pay.

Renee suggested asking the developer the exact proposal.

Ryan noted that Aspen Springs will not create all the traffic on Eight Mile Creek Road or Lower Woodchuck Road. He said the developer is proposing a payment schedule as lots are sold, which was included in the Board's packets. He asked to amend the variance to say that the developer will make road

improvements on Lower Woodchuck Road and Eight Mile Creek Road if the developers can enter into a latecomer's agreement.

Gary asked if latecomer's fees or costs are calculable.

James said he did not believe so. He also said he did not believe the Board could condition in a latecomer's agreement. He noted there is no way to calculate the costs because the County does not know the actual amount of improvement costs because it would be based on road costs and road usage by the latecomer.

Ben asked if the existing homeowners who use the road would be affected.

Ryan said they would not be. He also noted that this variance request would allow Lower Woodchuck Road to be designed under the new road standards.

Ben said if they are proposing to pay all road improvements and asking for a latecomer's agreement, but there is not a monetary amount for road construction, there will not be a way to calculate the costs.

James said he has a draft amendment to the regulations with a formula of what the latecomer would pay, based on the first developer doing improvements. He said that the idea of reimbursing the first developer is common because these major infrastructure improvements are usually used by more than just one developer.

Karen said she did not recall receiving a revised variance proposal that would allow the developer to construct the road with a provision for a latecomer's agreement.

Ryan said that it was suggested in letters from John Tabaracci and was also mentioned in previous public hearings. He said that if the regulations are amended so that latecomer's agreements are mandated, he asked, on the record, to have Aspen Springs benefit.

Ben said that the County does not normally require road improvements for minor subdivisions and that there has to be a reasonable limit on how long the developer will be reimbursed for improvements.

Ryan said he expected a sunset clause, with typical infrastructure lasting about 20 years. He noted that the bids to build this road can easily be submitted to the County and documented. He also noted that smaller subdivisions would only have to pay a percentage of the road cost since they do not contribute large amounts of traffic.

Karen said that although the concept of improving the entire length of road was raised, the developer has not submitted formal road plans for the entire length of the road.

Ryan said those plans can easily be approved and could be conditioned based on approval by the Road Department. He noted that road plans for Mountain View Drive have not been submitted either.

Karen said that as far as Staff is concerned, those plans would constitute new information.

James said the formula that they will try to draft into the Subdivision Regulations will include provisions for the life of the improvement and when the latecomer comes along. He explained that latecomers who arrive in the 10th year of a 20-year lifespan of infrastructure would pay less than those who arrived during the first year. He noted that the intent is that it would apply to all future subdivisions regardless of when infrastructure was completed.

Perry said he does not consider this proposal to be new information. He noted that the subdivision submittal discusses pro-rata and identifies their expected percentages of road usage. He noted that although he has not submitted a design, he has submitted the concept of pro-rata. He noted that the alternate proposal is to pay the full amount of road construction with the condition that there is a latecomer's agreement. He said that in the packet, there is talk of nexus and proportionality and he believes that pro-rata is close. He said that he might pay \$400,000 to \$500,000 for roads up front if others in the future are willing to pay for the roads.

JR said it appears that the Board has had a problem with the way the Road Department receives money going to a grader district. He noted he was in favor of having the developer pave the road from the subdivision to Eastside Highway and that the County Commissioners accept this as total payment. He also recommended that new subdevelopments pay a formula for the roads that they use and that there be a sunset clause in conjunction with the formula.

Lori said she agrees with JR because otherwise, everyone else has a free-ride. She recommended that the Board come up with some provision so the developer could receive a pro-rata share from future developments.

Ben agreed that JR made sense, but asked if the Board could rewrite the variance.

Karen said that John Tabaracci's letter mentioned that Wesmont may consider building out Lower Woodchuck Road and Eight Mile Creek Road. She noted that Staff does not have full road plans in review. She said that the current request is to pay the amount of money required to develop the road and that information is in the record.

Lori said she spoke with Dave Ohnstad and said he understood what the developer is currently proposing, as far as paving and doing roads up front.

Ben asked if the developer will pay the money and the County will build the road.

Ryan said the County would not build the road. He noted the original proposal was a pro-rata payment to the County so the County would build the road, but their proposal now is to physically build improvements on the paved portions of Eight Mile Creek Road and Lower Woodchuck Road.

James noted that the current proposal is to withdraw part of the variance. He said that the developer is still requesting a design exception under the variance.

Ryan said that the design exception is out of equation due to a recent County Commissioner decision. He said that the developer is requesting to build the road under AASHTO standards.

Karen said that the new information, including road plans, needs to be submitted to Staff and then the subdivision would have to go back through the public process. She explained that the County is stringent on what constitutes new information.

James said that the County Commissioners did decide that design exceptions from AASHTO did not require a variance, but both he and George Corn believe that would be illegal.

Ryan said that if it would help with new information, they could pay the County to do the road improvements. He also said he agrees with James about the design exception.

Dan said he agrees with JR's position that the County has a problem with pro-rata and they should allow the developer to bring roads to County standards and then be reimbursed with a latecomer's agreement.

Les said he believed the Board has to act on the variance as it is presented and if the developer wants to attach conditions onto the payment process, that can be done after the approval or denial of the variance. He motioned to approve the variance based on the findings of fact and subject to the conditions in the Staff Report.

Gary seconded the motion.

Steve Hall asked if the road design includes integration of uncrushed base and noted that is basically like stacking BBs.

Dan noted that public comment is over.

JR said the point is valid, but noted that the AASHTO standard is a national standard. He asked if AASHTO standards are federal regulations.

James said that AASHTO standards are design guidelines, not regulations, but are used by engineers. He explained that the guidelines were adopted as regulations through the Subdivision Regulations.

JR noted that the County has sold all their asphalt equipment.

Ben said he was in agreement with JR's recommendation. He noted that it seems more appropriate to deny this variance and recommend a resubmittal with complete information. He commented that in the variance, the developer is not proposing to pave the road.

Lori said that the current proposal is for the developer to construct the road. She asked Les to amend his motion so that if a process is put in place, the developer would be reimbursed by other users.

Les said the Board needs to act on the variance and if they want to add conditions, they can do that later.

Dale said that the proposal is for the developer to pay a portion of the cost to improve Lower Woodchuck Road. He noted that the road does not currently meet County standards because it is just oiled gravel.

Karen noted that the developer's original proposal was to reconstruct the gravel portion of Lower Woodchuck Road and pay pro-rata on the other roads. She explained that Staff's recommendation reads as conditional approval, but should functionally be denial. She said that the developer is currently asking to construct all of Lower Woodchuck Road, which would require new information. She emphasized that Staff is requesting that Lower Woodchuck Road be upgraded to meet County standards.

Ben clarified that Lower Woodchuck Road would be upgraded from Eastside Highway to the last exit in this subdivision, but not beyond that.

Perry said he has done a lot of boring testing to determine the value of the road from the roundabout to the paved north and south sections of Lower Woodchuck Road. He said that there are a lot of things needed to make the road meet AASHTO standards.

JR said that the original variance request occurred before the Board started the public hearings. He asked if the Board would have to have another hearing for this variance and if it would involve only new information on the variance.

James said that the variance is ripe for decision. He noted that alternate proposals did come out in the public hearing and suggested clarification of the motion. He explained that the original variance was to pay pro-rata and to ask for a design exception for the curvature. He said that it sounds like the pro-rata request has been withdrawn, but the design exception is still out there. He commented that he does not believe that a new hearing is required on this variance. He noted that Staff does not have road plans for Lower Woodchuck Road or Mountain View Lane, although the plans will be required, most likely before the County Commissioner hearing. He said that pursuant to SB116, the road plan information will have to come back before the Board, but the hearing would only be on the new information, not the entire variance.

JR asked if the Board could split the variance into denying the pro-rata share and approving what the Board wants them to do.

Karen said that would be a good idea. She noted that the original variance request was to pay pro-rata and to reconstruct the gravel portion of Lower Woodchuck Road to current County standards.

Les said his motion was to approve Variance 7 as stated by Staff in the Staff Report.

Gary said he was confused because what the developer wants to do is different from the variance request. He noted he likes what the developer is currently proposing, but wants to follow the correct procedure.

Ben suggested denying the motion and letting JR restate the new one.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (7-1) to deny the motion to approve Variance #7. The motion failed. (See Attachment L, Variance #7 Vote Sheet)

(ix) Board Deliberation on Variance Request #7 & #8 (To allow the developer to pay a portion of the cost to improve Eight Mile Creek Road from Eastside Highway to Lower Woodchuck Road instead of improving the road to meet County Standards)

(a) Board discussion and questions

JR motioned that the Board deny the request by the developer to pay the pro-rata for Lower Woodchuck Road and Eastside Highway.

Ben seconded the motion and asked what the second motion would be.

JR said the second part of his motion is to approve bringing the road to AASHTO standards from the subdivision to Eastside Highway, with an additional request for the County Commissioners to allow a latecomer's payment for new development on road.

Dale noted that Gunshy Ridge III was just approved in the same area and asked if they would have to pay pro-rata for the new roads.

Marilyn Owns Medicine said that the public does not have a clear understanding of the proposal because they have not had an opportunity to see it and comment on it.

Karen explained that the Board wants to combine Variances 7 and 8 and this would address both of them.

JR said that current landowners and already approved subdivisions, such as Gunshy Ridge III, would be exempt from paying back payments for road improvements.

James recommended that the Board act on the first motion.

Ben asked the names of road sections leading to the subdivision.

Ryan showed a map which divided the roads into different segments.

JR restated that his first motion is to deny the request for a pro-rata share on the road from the subdivision to Eastside Highway.

Dale seconded the motion.

The Board voted on the first motion. (See Board Decision below for results of the vote)

JR motioned to accept the developer's offer to pave, at his expense, the roads from the north subdivision entrance to Eastside highway in their entirety according to AASHTO standards and with a latecomer's agreement per the County Commissioners.

(Staff Note: Since the developer did not request a variance from the road standards to meet AASHTO for the entire length of off-site roads, this motion can only technically apply to the gravel portion of Lower Woodchuck Road.)

Gary seconded the motion.

(b) Board action

(1) Review of the Variance Proposal against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(2) Board Decision

The vote was called; the members voted (8-0) to deny the request of the developer to pay pro-rata for external roads except the gravel portion of Lower Woodchuck as mentioned in Variances #7 & #8. (See Attachment M, Variance #7 & #8 Vote Sheet 1)

The vote was called; the members voted (8-0) to approve the motion to allow the developer to improve the external subdivision roads to Eastside Highway to AASHTO standards with a possible latecomer's agreement. (See Attachment N, Variance #7 & #8 Vote Sheet 2)

(c) Board discussion continued

JR said that Variance 8 is a moot point.

Les said that as he read Variance 8, it was a request not to pave Eight Mile Creek Road. He said that a variance was passed requiring a southern entrance to the subdivision via Eight Mile Creek Road and thought it might come up as an issue now.

Ben noted that the Board only denied the other variance and did not specify a solution.

Karen said that with denial of the connectivity variance, a portion of Eight Mile Creek Road would have to be approved and this would trigger the submittal of road plans.

James said that both roads will have to be completed under the old regulations since there is not a variance request that covers it.

Ben asked if they needed any findings of fact under Variance 8 if it is moot.

Karen said they did not.

(x) Board Deliberation on the Subdivision Proposal

(a) Board discussion and questions

Gary asked if, based on denials of some of the variances, the developer was going to resubmit his plans because if they decided on the subdivision as it is now, it would be based on denials and approvals. He said he was not sure if it was appropriate to move on if the developer will resubmit and asked the Board to allow additional time for information.

Ben said that whether they vote on the subdivision or not, he has some questions to present. He noted that if the County Commissioners approve the phasing variance they will be dealing with a different subdivision than the Board is considering. He asked what other subdivision proposals Karen was aware of that relates to these roads, the schools, the sheriff, etc., on other major parcels around this property.

James said the information has not been compiled and there is no way to answer his question. He said that other property owners have private interests, but they do not affect the impacts of this subdivision.

Ben said he respectfully disagrees. He believed that the Board should consider proposals which have been submitted to the Planning Department. He asked if the beneficial water use permit from DNRC is for all wells and the total project or just the first phase.

Renee said the permit is for the entire project and noted that the DNRC requires public water systems to have a beneficial water use permit.

Ben recommended a modification to make the statement clear. He said he was concerned if Condition 15 of the Staff Report still applies and asked if the Board needs to set some time limits. He said he understands that the issue changed with the memorandum given out tonight, but asked James to explain the matter.

James said that the language on Page 9 was proposed to be deleted by the most recent Staff Report because the developer will not pay a pro-rata share. He noted it could apply if the County Commissioners approve the variance of which the Board recommended denial. He noted that if the roads were paved, there could not be an improvement district that could make the same improvements.

Ben said that the Staff Report left the amount of school donation up to the Board for recommendation. He said the School District is asking for a payment of \$5,312.50 and he recommends that barring other negotiations, the Board condition that amount. He asked how the developer will meet the water supply requirements for the Fire District.

Ryan said the developer is proposing fire hydrants with amounts of 1,000 gallons per minute, totaling about 700,000 to 800,000 gallons per minute.

Dale said the Board needs to get their act together about school donations. He asked if the Board requires Perry to pave up to the roundabout, if he still has to submit the \$88,000.

Ben said the issue comes down to the interpretation of cumulative impacts. He said that if the Board cannot consider future factors, then they end up with a situation of 30 slots available in the school, and any future subdivision can be approved as long as it does not top 30 kids. He said that if the amount of students will push the school over the top, the Board has no choice but to deny the subdivision, if there is no other offer for the school. He said that the only other solution is for taxpayers to pay for schools. He said the Board may run into a situation where they may approve small subdivisions but cannot approve larger ones because there is not enough money from taxes to pay for the schools or the Sheriff.

Lori asked if Ben if he had read the letter from James that discusses capital improvements.

Karen said that the \$88,000 donation for improvements to the roundabout on Eastside Highway was a separate improvement than the roads discussed.

Gary said that one of Staff's recommendations for impact to wildlife was that the applicant remove lots E124 through E151 and other lots from the elk winter range. He asked if the developer had responded to that request.

Nick said that the applicant examined letters from Montana Fish, Wildlife & Parks (FW&P) for subdivisions in the same winter range. He noted that the Board has approved subdivisions in the winter range and their biologist noted the area is not critical winter range and has no greater impact than those subdivisions already approved.

Perry said that after recent hearings, a FWP Biologist asked permission to walk the subdivision site; he found no indication of elk. He said that Dr. Joe Elliott asked them to leave substantial open space to benefit wildlife. He said he feels that it is important not to create a precedent with lot removals.

Gary said that FWP requested that those lots to be exempt from building.

JR asked if the beneficial water use permit was for all the wells or just the first phase. He asked if the permit included the additional 40 lots that would have private wells. He noted that wells on private property are not regulated unless they exceed 35 gallons per minute. He said that at a previous hearing, the developer's agent said that 300 gallons per minute would be required for the

entire subdivision, but also stated that 40 lots would have private wells; the addition of 40 houses at 35 gallons per minute with proposal for 300 gallons, is over 1200 gallons per minute. He asked clarification because it appeared that 40 wells will go without scrutiny in this subdivision because they are under a different law.

Renee said that if wells use 35 gallons per minute or less, they are exempt from a water permit from DNRC. The developer is proposing flexibility for individual wells, shared wells, or water from a public water system.

JR asked clarification if the additional wells proposed were part of the overall water rights previously proposed.

Perry said they will retract the request for 21 additional wells on larger lots. He said that Staff recommends that the entire community water system be approved before the first phase is platted and there will not be any private wells.

Renee said that the Board could add a condition of no private wells.

Ben said that under the language of the statute, it appears the County is prohibited from requiring a school donation. He recommended that the developer reach an agreement with the School District. He said that there is a current proposal for \$300 per lot, but the School District wants \$5,000 per lot, which is a long way from compromise. He said that the Board has to name a recommended amount and his recommendation is \$5,312.50. He said that the state law is strange and does not impose limits on other capital facilities like public health and safety or public roads. He said the Board is not restricted from asking for an agreement between the subdivider and Sheriff to address problems.

Lori said the school donation is a voluntary contribution because the County does not have impact fees at this point.

Ben asked if impact fees will apply even if they are passed after the subdivision is approved.

James said there is nothing to prevent the developer from paying more than is customary. He noted that unless there is a compelling argument why the law does not apply, the Board cannot require a condition for any payment relating to capital facilities for education.

JR said that at the last public hearing, there was a discussion between James and John Tabaracci. He asked if there was resolution to that discussion.

James said the discussion with Tabaracci was about cumulative impacts. He said that the school donation argument was raised by a different attorney at a different meeting.

Gary said that one of the concerns relating to public health and safety is the Sheriff's difficulty in responding to calls in the northern part of the County. He noted that residents of Aspen Springs would have to decide if they wanted to incorporate. He said he did additional research to see if private security firms

could offer services comparable to that of the Sheriff and found out they could. He asked the developer to consider adding private security to homeowner's fees for added public health and safety protection. He acknowledged that the circumstances might change, but for the interim, he asked the developer to consider that option.

Les said that he worked in law enforcement for a number of years and the Sheriff has jurisdiction over the area; he would have to approve the internal security force. He said it is unlikely that he would have the legal right to approve an internal security force that had not been through law enforcement academy.

Lori said that Renee recommended no Board decision as Staff is waiting for information on the flood hazard determination review.

Ben said that as of the last Staff Report Amendment, important issues have not been mitigated and there are no proposals to mitigate the situations. He noted that based on that memo, Staff recommends denial.

Renee said that Staff recommends that the Board close the public hearing and request more information; the developer would have to go through the public process again.

Karen said that if the Board is asking if Staff could recommend approval of the subdivision in its current status, Staff would recommend denial at this point. She recommended that additional information be provided and additional mitigation be resolved before reopening the public process.

Perry said he feels they have proposed sufficient voluntary mitigation, especially with \$88,000 proposed for the slip lane. He said he has two letters, one from Jim Lynch, the director of MDT, and the other from a local engineer, Dwayne Kailey, which acknowledge that MDT cannot ask for money. He said that he does not think the Sheriff will ever give his assent to mitigation. He said that as of 5:00 p.m., he feels that he has mitigated the flood hazard zone.

Nick noted that the developer has worked hard to reach agreements with MDT regarding the roundabout and slip lane. He said he left numerous phone messages and emails with MDT, but they did not return his phone calls or correspondence. He explained that MDT noted they could not take money for the slip lane, and explained that the developer has volunteered \$2,000 for a traffic study.

Steve Hall noted that the letter sent to him was not from Jim Lynch, but from Brian Schweitzer.

Nick said he met with the Sheriff before they submitted this subdivision and tried to identify the problem and mitigate it. He said that every time they tried to propose mitigation, the Sheriff told him that the County Commissioners control the budget. He noted the Sheriff also said that he will take any donation but it does not mitigate the current situation. He explained that there is a problem without the addition of Aspen Springs. He said he thought the Sheriff is accepting their proposal in his response letter. He noted that they hired a wildlife expert and then left high ridges open, which are the most important

areas for mule deer and elk. He commented that FWP will probably not come out and say that the situation is mitigated.

James said that the County does have jurisdiction over that intersection regardless of MDT's thoughts. He said that Montana Code and local regulations require review for public health and safety and local services, which includes emergency services. He said that there are impacts that can be required to be mitigated or might affect the outcome. He noted that both he and George Corn concur with Staff's recommendation.

JR asked if the Board is requiring the developer to mitigate to the federal highway as well.

James said that if they make a finding that there will be negative impacts from the subdivision to any local roads due to public health and safety, the Board has the power to take that into account regardless of road designation.

Ryan said that MDT identified a public health and safety issue at the intersection of Eastside Highway and Eight Mile Creek Road, but said there is not a health and safety issue at the intersection of US Highway 93 and Eastside Highway. He noted that MDT just started a study on the corridor from Lolo to Florence to identify problems there. He said that Staff is asking the developer to mitigate things of which he can provide no mitigation. He explained that in an email chain Matt Smith, the County's contracted reviewing engineer, said that after reviewing the flood areas, he only has two recommendations: that recreational improvements be anchored and that the corner of Lot E-231 be conditioned with a 10-foot no-build zone for drainage. He noted that this is the additional information which Staff requested.

Candi Jerke asked if this was new information.

Ryan said that Staff has not been able to look at it yet but he believes that lots B147 through B149 are not in the flood hazard area.

John said he was getting the perception that Staff and the Board are thinking that to mitigate, the developer has to get the agency to braise the situation in the first place and then have the developer agree. He said that 76-3-608, MCA says that the Board can impose mitigation. He noted that if agencies are not available, the Board can decide the mitigation themselves.

Ben motioned denial of this subdivision as it is structured based on information in the record, public comment, documents, and information submitted by Staff and with concerns about local services, and public health and safety.

Les seconded the motion.

Gary said he is concerned that he feels the Board is washing their hands and sending it to the County Commissioners with many unresolved issues. He explained that the developer will probably present new variances to keep this subdivision under consideration. He suggested that the Board still needs to do work on the subdivision.

Les commended the developer on some of his fine proposals and noted a trend toward open space preservation. He explained that the Board is now faced with trying to provide adequate public services and look out for public health and safety. He said that the Board cannot ignore the situation and there are no suggestions for alleviation. He said that the last attempt to get the Sheriff's budget enhanced with a mill levy was turned down. He noted that an additional 6,000 trips a day on the roads at full build out creates a traffic situation bound to be hazardous and the Board cannot alleviate that situation. He noted that there were many written and verbal comments given and the general tenor from the public was that the subdivision is not in the public interest; the Subdivision Regulations say the Board can turn down a subdivision if it is not in the public interest.

JR said that the motion was out of order because the Board did not discuss or review the Six Criteria.

Mary Lee said that she is for cluster development and likes the concept because it leaves open space, but she is concerned about services to the community and would like to make sure that they are judging this in reference to the public and what their needs and desires are as well.

Ben said he felt like it was important to get something on the table, but did not mean to exclude the Six Criteria. He listed the decision options available for the Board and noted that the applicant could ask for an extension and provide more data for additional hearings.

The Board went through the Six Criteria. **Gary** abstained from voting. (See Attachment O, Subdivision Six Criteria Review Sheet)

JR asked if there were water user facilities on this property.

Dan said there were not any to his knowledge.

Ben said that effects on water user facilities can be to adjacent properties as well. He noted that there was a lot of conflicting testimony on water impacts.

Karen asked if the Board evaluated effects on the six criteria with the proposed mitigation in mind.

Dan said he did and hoped the other Board members did too.

JR asked Karen if she was referring to the previous decisions on the variances or other mitigation.

Karen said she was referring both to those decisions and mitigation proposed by Staff.

Ben noted that there is a 68,000 volt power line that crosses this property and 12 lots were proposed underneath the line, which would be a minimum height of 35 feet above ground. He noted there could be potential safety risks if two-story houses under the line caught fire.

Ryan noted that the lots were expanded so the houses will not be built under the power line.

The vote was called; the Board voted (3-5) to deny the motion to deny the subdivision. The motion failed. (See Attachment P, Subdivision Vote Sheet #1)

James explained that the Board needs to make some kind of recommendation to the County Commissioners tonight.

Lori said that the Board needs to look at the proposal with all conditions proposed by Staff. She noted that Staff has recommended that the developer pay \$88,000 to MDT up front and many other conditions so the infrastructure will be completed up front. She asserted that Staff has tried to look at every issue and offer serious mitigation.

Ben explained that Staff lists a series of things in the memo that have not been mitigated in their opinion. He noted that Karen's recommendation was that the proposal should be denied.

Lori noted that regarding outstanding issues, Staff is recommending a donation to MDT of \$88,000 and the deletion of lots to preserve wildlife. She remarked that the Board denied the variance for an access through a platted subdivision, meaning the developer will have to improve another access. She also said that the developer has proposed a voluntary mitigation to the Sheriff's Office.

Ben noted that the Sheriff said the proposed mitigation will not solve the problem. He said that taxpayers have to solve the problem and it is not the fault of the subdivider. He noted that although the Board has recommended denial of several variances, the County Commissioners do not have to go along with the Board's recommendation. He said a lot of the subdivision's problems, especially the request for 33 phases over 20 years, has no solution at this point and he feels that they are on risky ground if they recommend approval with all the open questions. He read the decision options available to the Board.

Gary recommended a postponement so the Board could do more work before they send it to the County Commissioners. He noted that a private security firm is a possibility.

Karen explained that postponing the decision is an option, but the Board is running short on time. She noted that to go beyond this last regularly scheduled meeting, the developer has to consent to an extension. She also noted if the Board wanted to continue the meeting, they would need enough time to schedule another meeting and approve minutes from that meeting in order to give the County Commissioners time to make a decision.

James noted that within 10 days of the public hearing, the Board needs to make a written recommendation to the County Commissioners; Staff will need something to give to the County Commissioner or else the Board will need to have another meeting.

Gary asked Perry if he wanted an extension so the Board can have more time to deliberate.

Nick recapitulated that the areas Staff has identified for additional information include the flood hazard areas, the intersection at Eastside Highway and US Highway 93, wildlife, the Sheriff's Department, the school, the road connection to the south and the road design for Lower Woodchuck Road and Eight Mile Creek Road. He asked for a recommendation from the Board tonight.

Gary motioned to deny the subdivision based on the information they now have and without additional review time.

Ben seconded the motion.

JR asked what the Board's rationale is.

Gary said it was public health and safety.

JR asked if the Board was going to deny the motion first and then come up with rationale or reverse the order.

Gary said that a motion should have rationale behind denial, although it could be developed during discussion on the motion.

Les said that the Board has sufficient grounds for denial based on public health and safety. He stated that the County cannot become obligated to a situation that can result in disaster for taxpayers, namely, when law enforcement cannot respond to calls or traffic becomes dangerous. He also noted that the subdivision is not in the public interest.

JR said that the rationale for denial is based on fact that with the variance denials, it changes the presentation of this subdivision before the County.

The Board took a three-minute break to let the developer decide if he wanted to ask for an extension.

Nick asked for a recommendation from the Board at this meeting.

(1) Review of the Subdivision Proposal against the Six Criteria

1. Effects on agriculture, including effects on the agricultural sector, loss of agricultural ground and effects on surrounding agricultural activities or practices.

One Board Member agreed the effects were significant, six said they were non-significant, and one abstained.

2. Effects on Agricultural water-user facilities.

Three Board Members agreed the effects were significant, four said they were non-significant, and one abstained.

3. Effects on local services, including public road system, police and fire protection, utilities, and public schools.

Seven Board Members agreed the effects were significant. One Board Member abstained.

4. Effects on the natural environment, including ground water contamination, riparian/wetland areas, soil erosion, vegetation and air pollution, and noxious weeds.

Two Board Members agreed the effects were significant, five agreed the effects were non-significant and one abstained.

5. Effects on wildlife and wildlife habitat, including fisheries and mammals.

One Board Member agreed the effects were significant, six said they were non-significant, and one abstained.

6. Effects on public health and safety, including sanitary issues such as sewage disposal and ground water contamination, police and fire protection, wildland fire hazard, traffic safety and the presence of other known hazards (onsite and offsite) such as high-pressure natural gas lines, airports, railroads, overhead power lines, industrial activities, mining activities, irrigation ditches and defined dam inundation areas.

Three Board members agreed the effects were significant, four said they were non-significant and one abstained.

(See Attachment O, Subdivision Six Criteria Review Sheet)

(2) Board Decision on the Subdivision Proposal

The vote was called; the members voted (7-1) to deny the Subdivision. (See Attachment Q, Subdivision Vote Sheet #2)

8. **Close Public Hearing**

9. **Communications from Staff**

There was none.

10. **Communications from Public**

Dan did not ask for public comments.

11. **Communications from Board**

There was none.

12. **New Business**

There was none.

13. **Old Business**

There was none.

14. **Next Regularly Scheduled Meeting:** August 16 at 3:00 p.m.

Reynolds Lot 1B, AP (Edinger) Subsequent Minor – Public Hearing
Sunnyside Orchards #4, Lot 8A (Price) Minor – Public Hearing

15. **Adjournment**

Dan adjourned the meeting at 11:39 p.m.